FEDERAL CIRCUIT AND FAMILY COURT OF AUSTRALIA

FACT SHEET

Expert witnesses in family law

This fact sheet provides information about the different types of experts that provide evidence in family law matters before the Federal Circuit and Family Court of Australia (the Court).

Family consultant

The role of a family consultant is defined under sections 11A–11F of the *Family Law Act 1975* Cth. These functions include assisting and advising the Court, and parties, in relation to court proceedings. This is generally done by way of conducting an assessment, and providing a written document to the Court that takes the form of expert evidence in the proceedings. As such, a family consultant is considered to be an expert witness.

The work of family consultants is organised through the Court Children's Service section (CCS) and is fully funded by the Court.

Family consultants are either:

- employees of the Court who are appointed under the *Federal Court of Australia Act 1976*, or
- private practitioners who have applied and been deemed suitable by the Court Children's Service to undertake the duties of a family consultant, and are appointed pursuant to Regulation 7 of the *Family Law Regulations 1984*.

Family consultants who are employed by the Court are referred to as **court child experts**. Court child experts undertake the role of a family consultant and of a family counsellor (as defined under section 10B). Court child experts may only undertake one of these roles in a given matter. When undertaking the role of a family counsellor, the court child expert is not an expert witness as information shared with a family counsellor is confidential (section 10D).

Family consultants appointed under the regulations are referred to as **Regulation 7 family consultants** and are paid by the Court on a fee-for-service basis. These Regulation 7 family consultants may also prepare private reports or reports for Legal Aid. When they do so they are not performing the role of a family consultant and do not come under the governance of the CCS.

Selection criteria and performance

All court child experts and Regulation 7 family consultants must be fully registered psychologists, or social workers eligible for membership of Australian Association of Social Workers, and they must have a minimum of five years' relevant experience working with children and families.

Court child experts and Regulation 7 family consultants work within an extensive clinical governance framework, are subject to quality assurance mechanisms, and are required to participate in regular professional development and supervision.

The role of a family consultant

Court child experts and Regulation 7 family consultants conduct assessments and prepare reports pursuant to an order of the Court made under section 62G. These may be preliminary assessments prepared early in proceedings (undertaken by court child experts only) or assessments ordered in preparation for a final hearing. A comprehensive assessment undertaken by a family consultant for the purpose of being expert evidence for trial is referred to as a Family Report.

Other experts

Other types of expert witnesses in family law proceedings include the following:

- psychologists
- social workers
- child and family psychiatrists
- medical specialists
- property valuers, and
- financial consultants.

These types of experts may prepare a report pursuant to an order of the Court, usually as a result of the expert having been nominated by one or both parties (or their legal representatives). In some matters, the parties agree to engage an expert to prepare a report without an order of the Court. Reports prepared by these types of experts are generally funded by one or both of the parties.

If a private professional is preparing a report for the Court on behalf of both parties, that professional may be referred to as a **single expert**. In many matters, these privately commissioned experts are engaged to prepare a report that takes a similar form to a family report prepared by a family consultant. These are commonly referred to as **private family reports**.

In some states, the Legal Aid Commission may engage and fund an expert report writer following the appointment of an Independent Children's Lawyer.

Expert evidence may also be submitted to the Court by a professional who is/was providing treatment to one of the parties or children. These are commonly referred to as **treating practitioner reports**.

The *Australian Standards of Practice for Family Assessments and Reporting* provides guidance to expert report writers, decision makers, agencies and legal professionals regarding the Court's expectations in relation to family assessments and report writing. The CCS's clinical governance framework is aligned with these Australian Standards.

Challenging expert evidence

As with all evidence, the evidence of experts (including family consultants) may or may not be relied upon in the Court's determinative process. The appropriate means of challenging any expert evidence is through the Court process, e.g. by cross-examination.

More information

For more information see the following publications available on the Court's website.

- Family Consultant FAQs
- Court Child Expert FAQs
- Family Reports FAQs
- Child Impact Reports FAQs

For more information about the Court:

- go to **www.fcfcoa.gov.au**
- live chat on the website, or
- call 1300 352 00.